

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

JENNIFER VLASAK, Individually and on Behalf) of All Others Similarly Situated,) Plaintiff,) v.) CAPITAL MANAGEMENT SERVICES, LP,) Defendant.)	Case No.: 20-cv-1 CLASS ACTION COMPLAINT Jury Trial Demanded
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INTRODUCTION

1. This class action seeks redress for collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the “FDCPA”) and Wisconsin Consumer Act, Chs. 421-427, Wis. Stats. (“WCA”).

JURISDICTION AND VENUE

2. The court has jurisdiction to grant the relief sought by the Plaintiff pursuant to 15 U.S.C. § 1692k and 28 U.S.C. §§ 1331, 1337, and 1367. Venue in this District is proper in that Defendant directed its collection efforts into the District.

PARTIES

3. Plaintiff Jennifer Vlasak is an individual who resides in the Eastern District of Wisconsin (Milwaukee County).

4. Plaintiff is a “consumer” as defined in the FDCPA, 15 U.S.C. § 1692a(3), in that Defendant sought to collect from her a debt allegedly incurred for personal, family or household purposes.

5. Plaintiff is also a “customer” as defined in the WCA, Wis. Stat. § 421.301(17), in that the alleged debt Defendants sought to collect was incurred as a result of a consumer transaction.

6. Defendant Capital Management Services, LP (“CMS”) is a foreign limited partnership with its principal place of business located at 698 1/2 South Ogden Street, Buffalo, New York, 14206.

7. CMS is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

8. CMS is engaged in the business of collecting debts owed to others and incurred for personal, family or household purposes.

9. CMS is a debt collector as defined in 15 U.S.C. § 1692a and Wis. Stat. § 427.103(3).

FACTS

10. On or about January 13, 2019, CMS mailed a debt collection letter to Plaintiff regarding an alleged debt owed to “BARCLAYS BANK DELAWARE.” A copy of this letter is attached to this Complaint as Exhibit A.

11. Upon information and belief, the alleged debt referenced in Exhibit A was incurred as a result of the use of a credit card, which was used exclusively for personal, family, and household purposes.

12. Upon information and belief, Exhibit A is a form letter, generated by computer, and with the information specific to Plaintiff inserted by computer.

13. Upon information and belief, Exhibit A is a form debt collection letter used by CMS to attempt to collect alleged debts.

14. Upon information and belief, Exhibit A was the first written communication that Defendant sent to Plaintiff with respect to this alleged debt.

15. Exhibit A includes the following representation which largely reflects the statutory validation notice that the FDCPA, 15 U.S.C. § 1692g, requires that debt collectors send debtors along, or within five days of, the initial communication:

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment, if applicable and mail you a copy of such verification or judgment. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different than the current creditor.

16. Exhibit A also includes the following representation:

Original Creditor: BARCLAYS BANK DELAWARE
Current Creditor: BARCLAYS BANK DELAWARE
Description: Barclaycard Arrival Plus Maste
Account #: 6456
AMOUNT ENCLOSED: _____
Amount of Debt: \$18610.42

17. Additionally, Exhibit A states:

This company has been engaged by BARCLAYS BANK DELAWARE to resolve your delinquent debt. As of the date of this letter, you owe \$18610.42. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay will be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For more information, write the undersigned or call 1-877-335-6949.

18. Exhibit A thus states the “Amount of Debt” is \$18,610.42, without reference to any other minimum payment due, and further states: “As of the date of this letter, you owe \$18610.42. Because of interest, late charges, and other charges that amount may vary from day to day, the amount due on the day you pay will be greater.”

19. Upon information and belief, the debt referenced in Exhibit A had not yet been accelerated by the original creditor, who was still attempting to collect regular monthly installment payments associated with the account.

20. The representation in Exhibit A that Plaintiff's alleged debt had been accelerated is false, deceptive, misleading, and unconscionable and is a misrepresentation of the legal status of the debt. 15 U.S.C. § 1692e(2)(a); *see also* FTC Staff Commentary, 53 Fed. Reg. 50097, 50106 ("A debt collector may not ... falsely assert that the debt has matured or that it is immediately due and payable, when it is not.").

21. Alternatively, if Plaintiff's alleged debt had been accelerated, by stating "[b]ecause of interest, late charges, and other charges that amount may vary from day to day, the amount due on the day you pay will be greater," Exhibit A falsely threatens to impose such "late charges" and "other charges."

22. If Plaintiff's alleged debt had been accelerated and no party was sending monthly statements to Plaintiff, no further late fees were permissible. *See, e.g., Rizzo v. Pierce & Assocs.*, 351 F.3d 791, 794 (7th Cir. 2003) ("If for whatever reason, the Rizzos did not want to pay the late fees, they were free to pay the loan as accelerated. Such a payment would nullify any obligation to pay post-acceleration late fees.").

23. Furthermore, if Plaintiff's alleged debt had been accelerated, neither CMS nor the original creditor could collect any "other charges."

24. The WCA specifically prohibits the attachment of collection fees and other "default charges" on consumer credit transactions, even if the fee is separately negotiated. Wis.Stat. § 422.413(1) provides:

no term of a writing evidencing a consumer credit transaction may provide for any charges as a result of default by the customer other than reasonable expenses incurred in the disposition of collateral and such other charges as are specifically authorized by chs. 421 to 427.

See also Patzka v. Viterbo College, 917 F. Supp. 654, 659 (W.D. Wis. 1996).

25. Where neither the debt collector nor creditor could or would impose any additional “other charges” under Wisconsin law, the statement that the “the amount due on the date you pay may be greater” as a result of these charges is a material misrepresentation. *See Boucher v. Finance System of Green Bay, Inc.*, 880 F.3d 362 (7th Cir. 2018) (statement that account was subject to “interest, late fees, and other charges” when the account was subject to interest but not late fees or other charges was a material false and misleading statement).

26. Finally, by stating “Because of interest, late charges, and other charges that amount may vary from day to day, the amount due on the day you pay will be greater,” Exhibit A fails to state the amount of the debt in an unequivocal manner.

27. Although the above language largely tracks the safe-harbor language prescribed by the Seventh Circuit in *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, LLC*, the language diverges from the prescribed safe-harbor language in significant respects. See 214 F.3d 872 (7th Cir. 2000) (“Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater.”)

28. Specifically, instead of saying that “the amount due on the day you pay may be greater,” Exhibit A states: “Because of interest, late charges, and other charges that amount may vary from day to day, the amount due on the day you pay will be greater.” (emphasis added).

29. Exhibit A thus expressly indicates that, even if Plaintiff tendered the “Amount of Debt” listed on the letter immediately upon receipt of the letter, such amount would not satisfy her alleged debt.

30. Plaintiff read Exhibit A.

31. Plaintiff was misled and confused by Exhibit A.

32. The unsophisticated consumer would be misled and confused by Exhibit A.

33. Plaintiff had to spend time and money investigating Exhibit A, and the consequences of any potential responses to Exhibit A.

The FDCPA

34. The FDCPA creates substantive rights for consumers; violations cause injury to consumers, and such injuries are concrete and particularized. *Derosia v. Credit Corp. Sols.*, No. 17-cv-1671, 2018 U.S. Dist. LEXIS 50016, at *12 (E.D. Wis. Mar. 27, 2018); *Pogorzelski v. Patenaude & Felix APC*, No. 16-C-1330, 2017 U.S. Dist. LEXIS 89678 *9 (E.D. Wis. June 12, 2017) (“A plaintiff who receives misinformation from a debt collector has suffered the type of injury the FDCPA was intended to protect against.”); *Spuhler v. State Collection Servs.*, No. 16-CV-1149, 2017 U.S. Dist. LEXIS 177631 (E.D. Wis. Oct. 26, 2017) (“As in *Pogorzelski*, the Spuhlers’ allegations that the debt collection letters sent by State Collection contained false representations of the character, amount, or legal status of a debt in violation of their rights under the FDCPA sufficiently pleads a concrete injury-in-fact for purposes of standing.”); *Lorang v. Ditech Fin. LLC*, 2017 U.S. Dist. LEXIS 169286, at *6 (W.D. Wis. Oct. 13, 2017) (“the weight of authority in this circuit is that a misrepresentation about a debt is a sufficient injury for standing because a primary purpose of the FDCPA is to protect consumers from receiving false and misleading information.”); *Qualls v. T-H Prof’l & Med. Collections, Ltd.*, 2017 U.S. Dist. LEXIS 113037, at *8 (C.D. Ill. July 20, 2017) (“Courts in this Circuit, both before and after *Spokeo*, have rejected similar challenges to standing in FDCPA cases.”) (citing *Hayes v. Convergent Healthcare Recoveries, Inc.*, 2016 U.S. Dist. LEXIS 139743 (C.D. Ill. 2016)); *Long v. Fenton & McGarvey Law Firm P.S.C.*, 223 F. Supp. 3d 773, 777 (S.D. Ind. Dec. 9, 2016) (“While courts have found that violations of other statutes ... do not create concrete injuries in fact, violations of the FDCPA are distinguishable from these other statutes and have been repeatedly found to establish concrete

injuries.”); *Quinn v. Specialized Loan Servicing, LLC*, No. 16 C 2021, 2016 U.S. Dist. LEXIS 107299 *8-13 (N.D. Ill. Aug. 11, 2016) (rejecting challenge to Plaintiff’s standing based upon alleged FDCPA statutory violation); *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 U.S. Dist. LEXIS 89258 *9-10 (N.D. Ill. July 11, 2016) (“When a federal statute is violated, and especially when Congress has created a cause of action for its violation, by definition Congress has created a legally protected interest that it deems important enough for a lawsuit.”); *see also Mogg v. Jacobs*, No. 15-CV-1142-JPG-DGW, 2016 U.S. Dist. LEXIS 33229, 2016 WL 1029396, at *5 (S.D. Ill. Mar. 15, 2016) (“Congress does have the power to enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute,” (quoting *Sterk v. Redbox Automated Retail, LLC*, 770 F.3d 618, 623 (7th Cir. 2014))). For this reason, and to encourage consumers to bring FDCPA actions, Congress authorized an award of statutory damages for violations. 15 U.S.C. § 1692k(a).

35. Moreover, Congress has explicitly described the FDCPA as regulating “abusive practices” in debt collection. 15 U.S.C. §§ 1692(a) – 1692(e). Any person who receives a debt collection letter containing a violation of the FDCPA is a victim of abusive practices. *See* 15 U.S.C. §§ 1692(e) (“It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses”).

36. Plaintiffs who allege that debt collectors engaged in misrepresentations in their dunning letters have standing, as such misrepresentations risk injury to interests expressly protected by Congress in the FDCPA. *See Oloko v. Receivable Recovery Servs.*, 2019 U.S. Dist. LEXIS 140164 (N.D. Ill. Aug. 19, 2019); *Untersshine v. Encore Receivable Mgmt.*, No. 18-CV-

1484, 2019 U.S. Dist. LEXIS 134377 *8-9 (E.D. Wis. Aug. 9, 2019) (“Protecting consumers from misinformation is one of the ‘concrete interest[s] that Congress sought to protect,’ under the FDCPA. If a consumer is misinformed, rather than merely uninformed, the risk of harm is greater.”) (internal citations omitted); *Richardson v. Diversified Consultants*, No. 17-cv-4047, 2019 U.S. Dist. LEXIS 118786 *10-11 (N.D. Ill. July 17, 2019) (“the receipt of a communication misrepresenting the character of the debt (here, the amount owed) is the kind of injury that Congress sought to prevent through the FDCPA. ‘Such an injury falls squarely within the ambit of what Congress gave consumers in the FDCPA: ‘a legally protected interest in certain information about debts,’ with ‘deprivation of information about one’s debt (in a communication directed to the plaintiff consumer) a cognizable injury.’” (internal citations omitted); *see also Pierre v. Midland Credit Mgmt., Inc.*, 2017 WL 1427070, at *4 (N.D. Ill. Apr. 21, 2017); *Saenz v. Buckeye Check Cashing of Illinois*, 2016 WL 5080747, at *1-2 (N.D. Ill. Sept. 20, 2016); *Bernal v. NRA Grp., LLC*, 318 F.R.D. 64, 72 (N.D. Ill. 2016) (holding that Plaintiff had standing to challenge misleading communication sent to him because the communication violated his “right to be free from such misleading communications”). Such misrepresentations may cause consumers to make incorrect decisions about their finances or make payments to incorrect parties.

37. 15 U.S.C. § 1692e generally prohibits “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

38. 15 U.S.C. § 1692e(2)(a) specifically prohibits “The false representation of— the character, amount, or legal status of any debt.

39. 15 U.S.C. § 1692e(10) specifically prohibits the “threat to take any action that cannot legally be taken or that is not intended to be taken.”

40. 15 U.S.C. § 1692e(10) specifically prohibits the “use of any false representation or deceptive means to collect or attempt to collect any debt.”

41. 15 U.S.C. § 1692f generally prohibits “unfair or unconscionable means to collect or attempt to collect any debt.”

42. 15 U.S.C. § 1692f(1) specifically prohibits the “collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

43. 15 U.S.C. § 1692g provides, in relevant part:

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

The WCA

44. The Wisconsin Consumer Act (“WCA”) was enacted to protect consumers against unfair, deceptive, and unconscionable business practices and to encourage development of fair and economically sound practices in consumer transactions. Wis. Stat. § 421.102(2).

45. The Wisconsin Supreme Court has favorably cited authority finding that the WCA “goes further to protect consumer interests than any other such legislation in the country,” and is “probably the most sweeping consumer credit legislation yet enacted in any state.” *Kett v. Community Credit Plan, Inc.*, 228 Wis. 2d 1, 18 n.15, 596 N.W.2d 786 (1999) (citations omitted).

46. To further these goals, the Act’s protections must be “liberally construed and applied.” Wis. Stat. § 421.102(1); *see also* § 425.301.

47. “The basic purpose of the remedies set forth in Chapter 425, Stats., is to induce compliance with the WCA and thereby promote its underlying objectives.” *First Wisconsin Nat’l Bank v. Nicolaou*, 113 Wis. 2d 524, 533, 335 N.W.2d 390 (1983). Thus, private actions under the WCA are designed to both benefit consumers whose rights have been violated and also competitors of the violators, whose competitive advantage should not be diminished because of their compliance with the law.

48. To carry out this intent, the WCA provides Wisconsin consumers with an array of protections and legal remedies. The Act contains significant and sweeping restrictions on the activities of those attempting to collect debts. *See* Wis. Stats. § 427.104.

49. The Act limits the amounts and types of additional fees that may be charged to consumers in conjunction with transactions. Wis. Stats. § 422.202(1). The Act also provides injured consumers with causes of action for class-wide statutory and actual damages and injunctive remedies against defendants on behalf of all customers who suffer similar injuries. *See* Wis. Stats. §§ 426.110(1); § 426.110(4)(e). Finally, “a customer may not waive or agree to forego rights or benefits under [the Act].” Wis. Stat. § 421.106(1).

50. Consumers’ WCA claims under Wis. Stat. § 427.104(1) are analyzed using the same methods as claims under the FDCPA. Indeed, the WCA itself requires that the court analyze the WCA “in accordance with the policies underlying a federal consumer credit protection act,” including the FDCPA. Wis. Stat. § 421.102(1).

51. Further, the Wisconsin Supreme Court has held that WCA claims relating to debt collection are to be analyzed under the “unsophisticated consumer” standard. *Brunton v. Nuwell Credit Corp.*, 785 N.W.2d 302, 314-15. In *Brunton*, the Wisconsin Supreme Court explicitly

adopted and followed the “unsophisticated consumer” standard, citing and discussing *Gammon v. GC Servs. Ltd. P’ship*, 27 F.3d 1254, 1257 (7th Cir. 1994). *Id.*

52. Wis. Stat. § 427.104(1)(g) states that a debt collector may not: “Communicate with the customer ... in such a manner as can reasonably be expected to threaten or harass the customer.”

53. Wis. Stat. § 427.104(1)(h) states that a debt collector may not: “Engage in other conduct which can reasonably be expected to threaten or harass the customer” Wis. Admin. Code § DFI-Bkg 74.16(9) defines such “other conduct” as “including conduct which violates the Federal Fair Debt Collection Practices Act.”

54. Wis. Stat. § 427.104(1)(j) states that a debt collector may not: “Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist.”

55. Wis. Stat. § 427.104(1)(L) states that a debt collector may not: “Threaten action against the customer unless like action is taken in regular course or is intended with respect to the particular debt.”

COUNT I – FDCPA

56. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

57. Count I is brought in the alternative to Count II.

58. By stating the “Amount of Debt” is \$18,610.42, without reference to any other minimum payment due, Exhibit A falsely indicates that the balance of Plaintiff’s alleged debt had been accelerated as of the date of the letter.

59. If the debt has not been accelerated, only the minimum monthly payment, and not the entire account balance is due, and Exhibit A vastly overstates the actual amount due.

60. Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(a), 1692e(10), and 1692f.

COUNT II - FDCPA

61. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

62. Count II is brought in the alternative to Count I.

63. By stating “[b]ecause of interest, late charges, and other charges that amount may vary from day to day, the amount due on the day you pay will be greater,” Exhibit A falsely threatens to impose such “late charges” and “other charges” when neither CMS nor the creditor may actually impose such charges.

64. Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(a), 1692e(5), 1692e(10), 1692f, and 1692f(1).

COUNT III – WCA

65. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

66. Count III is brought in the alternative to Count IV.

67. By stating the “Amount of Debt” is \$18,610.42, without reference to any other minimum payment due, Exhibit A falsely indicates that the balance of Plaintiff’s alleged debt had been accelerated as of the date of the letter.

68. If the debt has not been accelerated, only the minimum monthly payment, and not the entire account balance is due, and Exhibit A vastly overstates the actual amount due.

69. Defendant violated Wis. Stat. §§ 427.104(1)(g), 427.104(1)(h), and 427.104(1)(L).

COUNT IV - WCA

70. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

71. Count IV is brought in the alternative to Count III.

72. By stating “[b]ecause of interest, late charges, and other charges that amount may vary from day to day, the amount due on the day you pay will be greater,” Exhibit A falsely threatens to impose such “late charges” and “other charges” when neither CMS nor the creditor may actually impose such charges.

73. Defendant violated Wis. Stat. §§ 427.104(1)(g), 427.104(1)(h), 427.104(1)(j), and 427.104(1)(L).

COUNT V – FDCPA

74. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

75. By stating “[b]ecause of interest, late charges, and other charges that amount may vary from day to day, the amount due on the day you pay will be greater,” Exhibit A fails to disclose the amount of Plaintiff’s alleged debt in an unequivocal manner.

76. Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(a), 1692e(10), and 1692g(a)(2).

CLASS ALLEGATIONS

77. Plaintiff brings this action on behalf of a Class consisting of (a) all natural persons in the State of Wisconsin, (b) who were sent collection letters in the form represented by Exhibit A to the complaint in this action, (c) seeking to collect a debt, incurred for personal, family, or household purposes, (d) between January 1, 2019 and January 1, 2020, inclusive, (e) that was not returned by the postal service.

78. The Class is so numerous that joinder is impracticable. Upon information and belief, there are more than 50 members of the Class.

79. There are questions of law and fact common to the members of the class, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether Exhibit A violates the FDCPA.

80. Plaintiff's claims are typical of the claims of the Class members. All are based on the same factual and legal theories.

81. Plaintiff will fairly and adequately represent the interests of the Class members. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases.

82. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible.

JURY DEMAND

83. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the Class and against Defendant for:

- (a) actual damages;
- (b) statutory damages;
- (c) attorneys' fees, litigation expenses and costs of suit; and
- (d) such other or further relief as the Court deems proper.

Dated: January 1, 2020

ADEMI & O'REILLY, LLP

By: /s/ John D. Blythin

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